

Preliminary List of Tort Liability Issues To Be Addressed By the RTO West Stage 2 Liability and Risk Management Work Group

Note: This list reflects preliminary discussion at the April 18, 2001 meeting of the RTO West Stage 2 Liability and Risk Management Work Group concerning tort liability areas that need to be addressed during Stage 2 (plus one subsequent addition). It is also derived in large part from the April 12, 2001 “brainstorming” document distributed for the April 18 meeting.

1. How to deal with FERC’s rejection of the Agreement Limiting Liability Among RTO West Participants in its April 26, 2001 order in Dockets Nos. RT01-35-000 and RT01-15-000.
2. Possible “gaps” or ambiguities in Agreement Limiting Liability – examples:
 - Who’s responsible for “conditions” (subsection 4.3) caused by poor maintenance (subsection 4.2) on facilities operated by RTO West?
 - What type of interconnection facilities is RTO West assuming liability for contact claims in subsection 4.3?
 - Does the save, defend and hold harmless commitment in subsection 4.3 apply to contacts with those interconnection facilities as well as to facilities operated by RTO West?
3. “Island” control areas that are not parties to the Agreement Limiting Liability (*given FERC’s April 26, 2001 order noted in Item 1 above, the problem may be much broader than just “island” control areas . . .*).
4. Dealing with the possibility that changes in law could defeat the intent of Section 16.2 of the Agreement Limiting Liability.
5. Who/what is at risk if a PTO/other entity refuses to follow an RTO order?
6. Environmental liability (to private parties or to governmental bodies) in managing hazardous waste, pollutants, noxious weeds, etc. under the control of RTO West (*e.g.*, possibility that RTO West might be named as a “Potentially Responsible Party” under various comprehensive federal environmental statutes).
7. Liability for “contact” claims.
8. Allegations that RTO West failed to manage its markets properly—FTRs, AS, other.
9. Should there be any provisions for liquidated damages in the RTO West Tariff? If so, should it be limited to any special class(es) of customers?

10. Scheduling errors and dispatch errors – both with respect to parties that have signed the Agreement Limiting Liability and for RTO West Tariff customers that have not signed the Agreement Limiting Liability.
11. Maintenance issues.